IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3032 of 1998
in
WRIT PETITION NO.2468 OF 1987

Shakuntala Ahluwalia ... Applicant
(Orig.Respondent no.2)

versus

1. Rinku Jaiswal & ors .. Respondents

Ms.Divya Shah i.b M/s Divya Shah & Co for Applicant

Mr.A.K.Abhyankar and Mr.A.B.Nagarkar i/b M/s Solomon & Co for Respondent no.1.

CORAM : S.B.MHASE AND
D.G.KARNIK, JJ

DATED : 23rd February, 2006

P.C.

1. Heard.

2. By this Civil Application, the applicant prays that the minutes of the order dated 26th April, 1996 passed by the division bench of this Court in Writ Petition No. 2468 of 1987 be set aside.

3. The facts necessary to understand the controversy are stated in brief below :

4. The opponent no.2, Rukhsana Cooperative Housing Society Ltd (for short the society) is the owner of the property bearing No.9 Pali Hill,

Bandra West, Mumbai (for short the said property). One flat bearing flat no. 1 (for short the flat) situate on the ground floor of the said property was allotted by the opponent no. 2 to the applicant. The applicant let out the flat to the opponent no.3. The opponent no. 3 in turn permitted his employee, the opponent no.1 herein, to occupy the said flat as an employee. The opponent no.2 filed a dispute, bearing No.CIV/330/426/1978, in the Co-operative Court, Mumbai against the applicant and the opponent nos. 1 and 3 for possession inter alia on the ground that the applicant had illegaly and without the permission of the society and contrary to its byelaws had parted with the possession of the flat and inducted the opponent nos. 1 and 3 and also on the ground that the applicant had not paid the dues of the society. After hearing the parties by a judgment and order dated 16th January, 1987 the Co-operative court held that the applicant had parted with the possession of the flat without consent and contrary to the bye laws of the opponent no. 2 and was also in arrears and had not paid the dues of the society. The Co-operative Court therefore, passed an award directing the applicant and the opponent nos. 1 and 3 herein to vacate the flat. The Co-operative Appellate Court also directed that the opponent

no. 3 should pay to the society an amount of Rs. 11,588.50 as arrears. The co-operative court also directed that the flat should be auctioned and the sale proceeds be applied for payment of the dues of the society and legal expenses. The applicant does not appear to have been aggrieved by this award. In any event the applicant did not challenge the award by filing an appeal. The society was partly aggrieved by the award in as much as the applicant was not ordered to pay its dues but the award was passed only against the opponent no.3. Though the award directed recovery of the money by auction of the flat no personal decree was passed against the applicant. Therefore the society challenged the award of the Co-operative Court by filing an appeal bearing No. 89 of 1987 before the Co-operative Appellate Court. The opponent no. 1 against whom the award was passed for possession also felt aggrieved and challenged it by filing an appeal bearing No.87 of 2000. Both the appeals were heard together and disposed of by the appellate Court by a common judgment and order dated 21st April, 1987. The appellate Court dismissed the appeal filed by the opponent no. 1 and partly allowed the appeal filed by the society. The appellate Court held that the arrears of outgoings which had then swelled to Rs.25,670.20 be paid by the applicant

and respondents jointly; the society was also granted liberty to dispose of the flat in accordance with the provisions of the bye laws. The award for possession passed against the applicants and the respondent nos. 1 and 3 was confirmed.

5. It is worthwhile to note that the applicant had neither filed an appeal against the judgment of the co-operative Court nor filed any cross objections in the two appeals filed by the opponent no.1 and the society. She thus allowed the award of her eviction passed against her by the co-operative Court to become final by not filing of an appeal or cross objections. The applicant also did not challenge the appellate order passed by the Co-operative Appellate Court by filing a writ petition. The applicant thus allowed the order of the Cooperative Appellate Court to become final against her.

6. The opponent no. 1 who was in actual possession of the flat however, felt aggrieved by the order passed by the Cooperative Appellate Court and challenged the same by filing a writ petition bearing writ petition No.2468 of 1987 in this court. It is in this writ petition that the impugned order in terms of the minutes was passed

by this court.

7. Learned counsel for the applicant submits that the minutes of the order was an order of the court passed on consent terms arrived at between the society and the opponent no.1 and the applicant was not a party thereto. She submits that since the applicant was not a party to the consent terms she is entitled to challenge the order passed by this Court. We have already pointed out that the applicant was not aggrieved by the order passed either by the Cooperative Court or by the Cooperative Appellate Court and had challenged neither of those orders. It was only the opponent no. 1, who was in actual possession of the flat, that was fighting the litigation. She was the only person who was aggrieved and had filed the appeal as well as the writ petition against the society. She joined the applicant no.1 and the opponent nos. 1 and 3 to the appeal and the writ merely as formal parties. In our considered view, consent of the applicant was not necessary for the minutes/consent terms as she was not aggrieved by the order of eviction passed against her and in any event allowed it to become final by not challenging it. In the circumstances, we see no merit in the application which is hereby dismissed.

(D.G. KARNIK, J) **(S.B.MHASE, J)**

rng.